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Tara Miller

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

**TARA MILLER,
INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS
SIMILARLY SITUATED,**

Plaintiff,

v.

DIRECTV, LLC,

Defendant.

Case No.: '13CV2073 L WMC

CLASS ACTION

**COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF
PURSUANT TO THE
TELEPHONE CONSUMER
PROTECTION ACT, 47 U.S.C. §
227, ET SEQ.**

JURY TRIAL DEMANDED

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INTRODUCTION

1. TARA MILLER (“Plaintiff”) brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of DIRECTV, LLC (“Defendant”) in negligently contacting Plaintiff on Plaintiff’s cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., (“TCPA”), thereby invading Plaintiff’s privacy. Plaintiff alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by their attorneys.
2. The TCPA was designed to prevent calls and messages like the ones described within this complaint, and to protect the privacy of citizens like Plaintiff. “Voluminous consumer complaints about abuses of telephone technology – for example, computerized calls dispatched to private homes – prompted Congress to pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).
3. In enacting the TCPA, Congress intended to give consumers a choice as to how creditors and telemarketers may call them, and made specific findings that “[t]echnologies that might allow consumers to avoid receiving such calls are not universally available, are costly, are unlikely to be enforced, or place an inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11. Toward this end, Congress found that

[b]anning such automated or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call or when such calls are necessary in an emergency situation affecting the health and safety of the consumer, is the only effective means of protecting telephone consumers from this nuisance and privacy invasion.

1 Id. at § 12; see also *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL
2 3292838, at* 4 (N.D.Ill. Aug. 10, 2012) (citing Congressional findings on TCPA's
3 purpose).

4 4. Congress also specifically found that “the evidence presented to the
5 Congress indicates that automated or prerecorded calls are a nuisance and an
6 invasion of privacy, regardless of the type of call....” Id. at §§ 12-13. See
7 also, *Mims*, 132 S. Ct. at 744.

8 5. As Judge Easterbrook of the Seventh Circuit recently explained in a TCPA
9 case regarding calls to a non-debtor similar to this one:

10 The Telephone Consumer Protection Act ... is well known for
11 its provisions limiting junk-fax transmissions. A less-litigated
12 part of the Act curtails the use of automated dialers and
13 prerecorded messages to cell phones, whose subscribers often
14 are billed by the minute as soon as the call is answered—and
15 routing a call to voicemail counts as answering the call. An
16 automated call to a landline phone can be an annoyance; an
17 automated call to a cell phone adds expense to annoyance.

18 *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 638 (7th Cir. 2012).

19 **JURISDICTION AND VENUE**

20 6. This Court has federal question jurisdiction because this case arises out of
21 violation of federal law. 47 U.S.C. §227(b); *Mims v. Arrow Fin. Servs., LLC*,
22 132 S. Ct. 740 (2012).

23 7. Venue is proper in the United States District Court for the Southern District
24 of California pursuant to 28 U.S.C. § 1391 because Defendant is subject to
25 personal jurisdiction in the County of San Diego, State of California.
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27
28

PARTIES

- 1
- 2 8. Plaintiff is, and at all times mentioned herein was, a citizen and resident of
- 3 the State of California. Plaintiff is, and at all times mentioned herein was, a
- 4 “person” as defined by 47 U.S.C. § 153 (10).
- 5 9. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and
- 6 at all times mentioned herein was, a corporation whose State of
- 7 Incorporation and principal place of business is in the State of California.
- 8 Defendant, is and at all times mentioned herein was, a corporation and is a
- 9 “person,” as defined by 47 U.S.C. § 153 (10). Defendant is a company
- 10 operating nationwide to offer television, Internet and telephone services.
- 11 Plaintiff alleges that at all times relevant herein Defendant conducted
- 12 business in the State of California and in the County of San Diego, and
- 13 within this judicial district.

FACTUAL ALLEGATIONS

- 14
- 15 10. At all times relevant, Plaintiff was a citizen of the State of California.
- 16 Plaintiff is, and at all times mentioned herein was, a “person” as defined by
- 17 47 U.S.C. § 153 (10).
- 18 11. Defendant is, and at all times mentioned herein was, a corporation and a
- 19 “person,” as defined by 47 U.S.C. § 153 (10).
- 20 12. At all times relevant Defendant conducted business in the State of California
- 21 and in the County of San Diego, within this judicial district.
- 22 13. Plaintiff did not provide Plaintiff’s cellular telephone numbers to Defendant
- 23 through any medium at any time.
- 24 14. Defendant obtained Plaintiff’s contact information through unknown means.
- 25 15. Beginning in May 2013, Defendant began contacting Plaintiff on Plaintiff’s
- 26 cellular telephone via an “automatic telephone dialing system,” (“ATDS”) as
- 27 defined by 47 U.S.C. § 227(a)(1) using an “artificial or prerecorded voice”
- 28

1 as prohibited by 47 U.S.C. § 227(b)(1)(A) in order to contact an unknown
2 third party.

3 16. Between May 2013 and July 2013, Defendant left multiple prerecorded
4 message for Plaintiff in Spanish attempting to contact a current subscriber
5 regarding said subscriber's account with Defendant.

6 17. Following receipt of these messages, Plaintiff contacted Defendant on June
7 5, 2013 to inform Defendant that Plaintiff was receiving prerecorded
8 messages from Defendant in error. Specifically, Plaintiff stated that Plaintiff
9 did not have an account with Defendant and explicitly requested that
10 Defendant remove Plaintiff from Defendant's system.

11 18. Defendant heeded this request for a short period of time but the prerecorded
12 calls to Plaintiff's cellular telephone resumed thereafter.

13 19. This ATDS has the capacity to store or produce telephone numbers to be
14 called, using a random or sequential number generator.

15 20. The telephone number Defendant called was assigned to a cellular telephone
16 service for which Plaintiff incurred a charge for incoming calls and texts
17 pursuant to 47 U.S.C. § 227(b)(1).

18 21. These telephone communications constituted communications that were not
19 for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).

20 22. These telephone communications constituted telephone solicitations as
21 defined by 47 U.S.C. § 227(a)(4).

22 23. Plaintiff did not provide prior express consent to receive calls or messages
23 on Plaintiff's cellular telephones, pursuant to 47 U.S.C. § 227 (b)(1)(A).

24 24. These telephone communications by Defendant, or its agent, violated 47
25 U.S.C. § 227(b)(1).

26 **CLASS ACTION ALLEGATIONS**

27 25. Plaintiff brings this action on behalf of himself and on behalf of all others
28 similarly situated ("the Class").

1 26. Plaintiff represents, and is a member of the Class, consisting of all persons
2 within the United States who received any telephone call from Defendant or
3 their agent/s and/or employee/s to said person's cellular telephone made
4 through the use of any automatic telephone dialing system or with an
5 artificial or prerecorded voice, which call was not made for emergency
6 purposes within the four years prior to the filing of this Complaint.

7 27. Defendant and its employees or agents are excluded from the Class.
8 Plaintiff does not know the number of members in the Class, but believes the
9 Class members number in the hundreds of thousands, if not more. Thus, this
10 matter should be certified as a Class action to assist in the expeditious
11 litigation of this matter.

12 28. Plaintiff and members of the Class were harmed by the acts of Defendant in
13 at least the following ways: Defendants, either directly or through its agents,
14 illegally contacted Plaintiff and the Class members via their cellular
15 telephones by using an ATDS, thereby causing Plaintiff and the Class
16 members to incur certain cellular telephone charges or reduce cellular
17 telephone time for which Plaintiff and the Class members previously paid,
18 and invading the privacy of said Plaintiff and the Class members. Plaintiff
19 and the Class members were damaged thereby.

20 29. This suit seeks only damages and injunctive relief for recovery of economic
21 injury on behalf of the Class, and it expressly is not intended to request any
22 recovery for personal injury and claims related thereto. Plaintiff reserves the
23 right to expand the Class definition to seek recovery on behalf of additional
24 persons as warranted as facts are learned in further investigation and
25 discovery.

26 30. The joinder of the Class members is impractical and the disposition of their
27 claims in the Class action will provide substantial benefits both to the parties
28

1 and to the court. The Class can be identified through Defendants' records or
2 Defendants' agents' records.

3 31. There is a well-defined community of interest in the questions of law and
4 fact involved affecting the parties to be represented. The questions of law
5 and fact to the Class predominate over questions which may affect
6 individual Class members, including the following:

- 7 a) Whether, within the four years prior to the filing of this Complaint,
8 Defendant or its agents initiated any telephonic communications to the
9 Class (other than a message made for emergency purposes or made
10 with the prior express consent of the called party) to a Class member
11 using any automatic dialing and/or SMS texting system to any
12 telephone number assigned to a cellular phone service;
13 b) Whether Plaintiff and the Class members were damaged thereby, and
14 the extent of damages for such violation; and
15 c) Whether Defendants and its agents should be enjoined from engaging
16 in such conduct in the future.

17 32. As a person that received at least one telephonic communication from
18 Defendant's ATDS without Plaintiff's prior express consent, Plaintiff is
19 asserting claims that are typical of the Class. Plaintiff will fairly and
20 adequately represent and protect the interests of the Class in that Plaintiff
21 has no interests antagonistic to any member of the Class.

22 33. Plaintiff and the members of the Class have all suffered irreparable harm as
23 a result of the Defendants' unlawful and wrongful conduct. Absent a class
24 action, the Class will continue to face the potential for irreparable harm. In
25 addition, these violations of law will be allowed to proceed without remedy
26 and Defendants will likely continue such illegal conduct. Because of the
27 size of the individual Class member's claims, few, if any, Class members
28 could afford to seek legal redress for the wrongs complained of herein.

34. Plaintiff has retained counsel experienced in handling class action claims and claims involving violations of the Telephone Consumer Protection Act.

35. A class action is a superior method for the fair and efficient adjudication of this controversy. Class-wide damages are essential to induce Defendants to comply with federal and California law. The interest of Class members in individually controlling the prosecution of separate claims against Defendants is small because the maximum statutory damages in an individual action for violation of privacy are minimal. Management of these claims is likely to present significantly fewer difficulties than those presented in many class claims.

36. Defendant has acted on grounds generally applicable to the Class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the Class as a whole.

FIRST CAUSE OF ACTION

NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT

47 U.S.C. § 227 ET SEQ.

37. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

38. The foregoing acts and omissions of Defendant constitutes numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

39. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq, Plaintiff and The Class are entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

40. Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

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SECOND CAUSE OF ACTION
KNOWING AND/OR WILLFUL VIOLATIONS OF THE
TELEPHONE CONSUMER PROTECTION ACT
47 U.S.C. § 227 ET SEQ.

41. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

42. The foregoing acts and omissions of Defendant constitutes numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

43. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq, Plaintiff and The Class are entitled to an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

44. Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and The Class members the following relief against Defendants:

FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF
THE TCPA, 47 U.S.C. § 227 ET SEQ.

- As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each Class member \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

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**SECOND CAUSE OF ACTION FOR KNOWING/WILLFUL VIOLATION OF
THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each Class member \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

TRIAL BY JURY

45. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: September 3, 2013

Respectfully submitted,

KAZEROUNI LAW GROUP, APC

By: /s Abbas Kazerounian
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